

Remarks

Claims 1-17 are pending.

Appreciation is expressed for the indication of allowability of claims 3-5, 8-10, and 14-16. However, at this time the applicant chooses to defer amendment of these claims until he has had the opportunity to traverse the Examiner's rejections.

In the Specification

The specification has been amended as noted above to correct a typographical error. No new matter has been added.

Rejection of Claims under 35 U.S.C. § 112

Claims 1-10 and 14-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant respectfully traverses this rejection.

In making this rejection, the Examiner states that "[i]t has been held that the recitation that an element is 'capable of' performing a function is not a positive limitation but only requires that ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138." Office Action of July 31, 2003, p. 2, no. 2. The applicant respectfully disagrees.

In re Hutchison does not in fact stand for such a proposition. The court in *Hutchison* states:

... the introductory clause to the effect that the laminated article is 'adapted' for the use in making a template or the like. This does not constitute a limitation in any patentable sense"

At best, *Hutchison* stands for the proposition that "adapted for" carries no patentable weight (a point the applicant does not concede) which of course does *not* mean that it is *per se* indefinite. Moreover, the Board of Patent Appeals and Interferences has rejected this argument. See *Ex parte Ralph B. Brick*, Appeal No. 2000-1794, p.5. The applicant notes that while *Ex parte Ralph B. Brick* is not binding precedent of the Board, its analysis of the this type of argument is both relevant and persuasive.

In rejecting this type of argument, the Board refers to *In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971) which states in relevant part:

We are convinced that there is no support, either in the actual holdings of prior cases or in the statute, for the proposition, put forward here, that 'functional' language, in and of itself, renders a claim improper. *Id.*

Thus, the use of the term "capable of" is proper and does not render any of the claims indefinite. Accordingly, the applicant respectfully submits that claims 1-10 and 14-16 are definite and allowable.

Rejection of Claims under 35 U.S.C. § 102/103

Claims 1, 6, and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Meek, U.S. Patent No. 4,469,122. Claims 1, 2, 6, and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schumacher et al., U.S. Patent No. 4,140,436, (Schumacher). Claims 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schumacher. The applicant respectfully traverses these rejections.

Meek neither teaches nor suggests a gas fitting interlock apparatus including:

... an interlock nut clamp configured to be fastened to the fitting support portion; and

a fastener for fastening the interlock nut clamp to the fitting support portion, the fastener being capable of being tightened to a tightness equal to or greater than a predetermined tightness sufficient to clamp a gas line disposed between the interlock nut clamp and the pedestal portion,

as required by independent claim 1, and generally required by independent claims 6 and 17.

The Examiner states that the claimed interlock nut clamp is taught by Meek's second head member **60** and that the claimed fastener is taught by Meek's locknut **100**. Office Action of July 31, 2003, p. 3, top. However, column 5, lines 45-50 of Meek state:

Referring further to FIG. 2 the valve **10** includes a second head member generally designated by the numeral **60** which is also provided with an externally threaded portion **62** whereby the head member may be threadedly engaged with threaded portion **32** of the body **12** as shown.

Thus, in contrast to the Examiner's assertion that Meek teaches "a fastener 100 for fastening the clamp 60 to the support 12," Meek specifically states that head member **60**

is threadedly engaged with threaded portion 32 of body 12, and thus locknut 100 is not a "a fastener for fastening the interlock nut clamp to the fitting support portion."

Moreover, it is clear from Meek that 60 is not an interlock nut clamp, but instead a head member of valve 12.

Regarding the claimed "the fastener being capable of being tightened to a tightness equal to or greater than a predetermined tightness sufficient to clamp a gas line disposed between the interlock nut clamp and the pedestal portion," the Examiner states: "Meek inherently discloses the claimed 'predetermined tightness . . . ' since the fastener 100 having sufficient tightness to fastening the clamp to the support." Office Action of July 31, 2003, p. 3, ¶ 1. The applicant respectfully disagrees. Moreover, MPEP § 2112 makes clear the fact that the Examiner must provide rationale or evidence tending to show inherency:

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)

The applicant respectfully submits that the Examiner has provided no such evidence or rationale tending to show inherency.

Additionally regarding claim 17, the Examiner has pointed to nothing in Meek that teaches or suggests the claimed "means for presenting an indication when the momentary switch is closed."

Accordingly, the applicant respectfully submits that independent claims 1, 6, and 17 are allowable over Meek.

Schumacher neither teaches nor suggests a gas fitting interlock apparatus including:

a pedestal portion;

a fitting support portion disposed on the pedestal portion;

an interlock nut clamp configured to be fastened to the fitting support portion; and

a fastener for fastening the interlock nut clamp to the fitting support portion, the fastener being capable of being tightened to a tightness equal to or greater than a predetermined tightness sufficient to clamp a gas line disposed between the interlock nut clamp and the pedestal portion,

as required by independent claim 1, and generally required by independent claim 6.

Referring to Figures 4 and 5 of Schumacher, column 6, lines 35-49 state:

The lever embodiment 100 shown in FIGS. 4 and 5 comprises a case 102 and a case cover 101 which are attached to upper diaphragm support 103. Larger diaphragm 105 is sealably clamped between upper diaphragm support 103 and diaphragm spacer 107. Smaller diaphragm 109 is clamped between diaphragm spacer 107 and lower diaphragm support 111. A pressure chamber 113 is formed by the pair of diaphragms 105 and 109 and the diaphragm spacer 107. Inlet connector 117 is attached to diaphragm spacer 107 and is aligned with inlet passage 115 to provide fluid communication for the system being monitored and for inflow 119 therefrom to pressure chamber 113 when it is necessary for the pressure-control device 100 to decrease the system pressure.

Thus, the applicant respectfully submits that: (1) Schumacher's case cover 101 does not teach or suggest the claimed pedestal portion as stated by the Examiner; (2) Schumacher's diaphragm support 103 and bolt 167 do not teach or suggest the claimed fitting support portion generally, and are not disposed on that which the Examiner believes to teach the claimed pedestal portion, i.e., case cover 101; and (3) Schumacher's diaphragm spacer 107 does not teach or suggest the claimed interlock nut clamp.

Regarding the claimed fastener for fastening the interlock nut clamp to the fitting support portion, the Examiner refers to Schumacher's pin assembly 140. Column 7, lines 9-20 state:

Pin assembly 140 comprises a pin 141, a ball 143, and a pin carrier 144, having a high-pressure shoulder 145 on one side thereof, and an elongated portion for seating valve spring 147. Pin 141 and ball 143 function as a valve when seating against and sealably closing valve seat 128. The high-pressure shoulder 145 contacts and is stopped by high-pressure surface 146 on lower diaphragm support 111. Valve spring 147 is a compression spring acting between pin 141 and a valve case 149 which is attached to lower diaphragm support 111, thereby sealably enclosing access passages to relief chamber 137.

Thus, not only is pin assembly not a fastener, but it does not fasten that which the Examiner believes to teach the claimed interlock nut clamp, i.e., diaphragm spacer 107,

to that which the Examiner believes to teach the claimed fitting support portion, i.e., diaphragm support 103 and bolt 167.

Regarding the claimed “the fastener being capable of being tightened to a tightness equal to or greater than a predetermined tightness sufficient to clamp a gas line disposed between the interlock nut clamp and the pedestal portion,” the Examiner states: “Schumacher . . . teaches fastener 149 abutting the portion 111 (fig. 4). The predetermined tightness, therefore, inherently exist.” Office Action of July 31, 2003, p. 3, no. 5. The applicant respectfully disagrees. Just because Schumacher teaches that “valve case 149 . . . is attached to lower diaphragm support 111,” does not mean that Schumacher inherently teaches the applicant’s claim limitation. Moreover, MPEP § 2112 makes clear the fact that the Examiner must provide rationale or evidence tending to show inherency:

“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)

The applicant respectfully submits that the Examiner has provided no such evidence or rationale tending to show inherency.

Accordingly, the applicant respectfully submits that independent claims 1 and 6 are allowable over Schumacher.

Regarding independent claim 11, the Examiner states:

Schumacher et al. teaches the claimed invention except for the method of using the claimed gas interlock apparatus. The steps/use claimed are deemed obvious in view of the functions of the structure in the combination discussed above. (Office Action of July 31, 2003, p. 4, ¶1)

The applicant respectfully disagrees. Claim 11 specifically requires:

inserting a gas line into an interlock component for receiving the gas line, the interlock component including a momentary switch;

tightening the interlock component to a tightness equal to or greater than a predetermined tightness sufficient to clamp the gas line, the tightness to which the interlock component is tightened enabling the momentary switch to close;

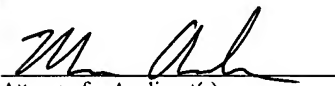
presenting an indication when the momentary switch is closed; and
preventing gas from flowing through the gas line when the momentary switch is open.

Thus, in addition to the arguments above regarding Schumacher, the applicant respectfully submits that the Examiner has pointed to nothing in Schumacher that teaches or suggests the claimed momentary switch use.

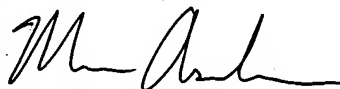
Moreover, the applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness. In addition to the claim elements not taught or suggested by the cited reference as described above, the Examiner has not shown that there is some suggestion or motivation to combine the teaching of Schumacher with anything other references or knowledge generally available to one of ordinary skill in the art. The Examiner has failed to explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the Examiner's purported combination, as required by, for example, *In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998).

Accordingly, the applicant respectfully submits that independent claims 1, 6, 11, and 17 are allowable over Meek and Schumacher, taken alone or in combination. Claims 2-5 depend from independent claim 1 and are allowable for at least this reason. Claims 7-10 depend from independent claim 6 and are allowable for at least this reason. Claims 12-16 depend from independent claim 11 and are allowable for at least this reason.

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop: Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on <u>Oct 31</u> , 2003.	
 Attorney for Applicant(s)	<u>10/31/03</u> Date of Signature

Respectfully submitted,



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